

California Code of Regulations  
Title 9. Rehabilitative and Developmental Services  
Division 1. Department of Mental Health  
Chapter 16. State Hospitals Operations  
Article 5. Contracts

Amend Article 5 to adopt section 4530 as follows:

**§ 4530. Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms**

**§ 4530.1 Definitions.**

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management with the provisions of Government Code Section 4525.

(b) "Small Business" means a firm that complies with the provisions of Government Code Section 14837.

(c) "Director" means the Director of the Department of State Hospitals or the Director's designee authorized to act on his or her behalf.

(d) "Department" means the Department of State Hospitals.

(e) "Architectural, landscape architectural, engineering, and environmental, land surveying services" and "construction project management" means those services, as defined in Section 4525 of the Government Code.

(f) The terms "minority business enterprise" and "women business enterprise" shall have the respective meanings set forth in Section 10115.1 of the Public Contract Code.

(g) The term "disabled veteran business enterprise" shall have the meaning set forth in Section 999 of the Military and Veterans Code.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code.  
Reference: Sections 4525 and 14837, Government Code; Section 10115.1, Public Contract Code; and Section 999, Military and Veteran Code

### **§ 4530.2 Selection Criteria.**

The Director shall utilize selection criteria for each proposed project which will comprise the basis for the selection of eligible firms to perform the required services. The criteria are to include such factors as:

- (a) Professional experience of the firm in performing services of similar nature.
- (b) Quality and relevance of recently completed or ongoing work.
- (c) Reliability, continuity, and location of firm to the project site.
- (d) Staffing capability.
- (e) Education and experience of key personnel to be assigned.
- (f) Knowledge of applicable regulations and technology associated with the services required.
- (g) Specialized experience of the firm in the services to be performed.
- (h) Participation as small business firm.
- (i) Other factors the Director deems relevant to the specific task to be performed.

These factors shall be weighed by the Director according to the nature of the proposed project, the complexity and special requirements of the specific services, and the needs of the Department.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code.  
Reference: Sections 4526 and 4527, Government Code

### **§ 4530.3 Announcement of Project.**

(a) A statewide announcement of each proposed project shall be published in the California State Contracts Register, in accordance with the Government Code (commencing with Section 14825), and in the publications of the respective professional societies. Failure of any professional society to publish the announcement shall not invalidate any contract.

(b) The announcement for each proposed project shall include, at a minimum, a brief description of the services required, location, duration, eligibility and preferences, submittal requirements, contact person for the Department, and the final response date for receipt of statements from firms of their demonstrated competence and professional qualifications.

(c) The Director shall identify potentially qualified small business firms interested in contracting with the Department, and shall provide copies of project announcements to those small business firms that have indicated an interest in receiving the announcements. Failure of the Director to send a copy of an announcement to any firm shall not invalidate any contract.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code.  
Reference: Sections 4526, 4527, 4529.12, 14825, and 14838, Government Code

#### **§ 4530.4 Selection of Qualified Firms.**

(a) After the expiration of the final response date in the published project announcement, the Director shall review and evaluate the written statements of demonstrated competence and professional qualifications using the selection criteria contained in Section 4530.2, and rank, in order of preference, the firms determined as eligible to perform the required services.

(b) The Director shall conduct discussions with at least the three most eligible firms, or a lesser number if fewer than three eligible firms have responded, about anticipated concepts and the benefit of alternative methods for furnishing the required services. From the firms with which discussions are held, the Director shall select, in order of preference, not less than three firms, or lesser number if fewer than three eligible firms responded, deemed to be the most highly qualified to perform the required services.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code.  
Reference: Sections 4526, 4527, 4528, and 4529.12, Government Code

#### **§ 4530.5 Estimate of Value of Services.**

(a) Before entering into discussion with any firm selected pursuant to Section 4530.4, the Director shall direct the Department staff to prepare an estimate of the value of the proposed project, based upon accepted rates for comparable services. The estimate will serve as a guide in determining fair and reasonable compensation in the negotiation of a satisfactory contract in accordance with the provisions of Section 4530.7, and shall not be disclosed until award of the contract or abandonment of the negotiation process for the services to which it relates.

(b) At any time the Director determines the Department's estimate to be unrealistic for any reason, the Director shall require the estimate to be reevaluated and, if deemed necessary, modified.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code.  
Reference: Sections 4526 and 4528, Government Code

#### **§ 4530.6 Statewide Participation Goals.**

In the negotiation of a satisfactory contract as provided in Section 4530.7, the best qualified firm must meet the statewide participation goals of not less than 3 percent for disabled veteran business enterprises unless the contract was exempted from the goal by the Department. The best qualified firm shall comply with the statewide participation goals as required by the regulations contained in Title 2, California Code of Regulations, Sections 1896.61-1896.67 and 1896.90-1896.96.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code. Reference: Section 4526, Government Code; Sections 10115, 10115.1, 10115.2, and 10115.3 and 10115.9, Public Contract Code; and Sections 999, 999.1, 999.2, 999.3, 999.4, and 999.5, Military and Veterans Code

#### **§ 4530.7 Negotiation.**

(a) From among the firms selected in Section 4530.4, as most highly qualified to perform the services required, the Director shall attempt to negotiate a satisfactory contract with the best qualified firm at a compensation which the Department determines is fair and reasonable.

(b) If the Director is unable to negotiate a satisfactory contract with the best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the second best qualified firm. If unable to negotiate a satisfactory contract with the second best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the third best qualified firm. If unable to negotiate a satisfactory contract with the third best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated.

(c) Where the Director is unable to negotiate a satisfactory contract in accordance with subsections (a) and (b), the Director shall continue the negotiations process with the remaining qualified firms, if any, in order of preference, until a satisfactory contract is reached. If unable to negotiate a satisfactory contract with any of the qualified firms, the Director shall abandon the negotiation process for the required services.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code. Reference: Sections 4526, 4526.5, 4527, and 4528, Government Code

#### **§ 4530.8 Amendments.**

Where the Director determines that a change in the contract is necessary during the performance of the services, the parties may, by mutual consent, in writing, agree to modifications, additions or deletions in the general terms, conditions and specifications for the services involved, with a reasonable adjustment in the firm's compensation.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code.  
Reference: Sections 10250 and 10251, Public Contract Code

#### **§ 4530.9 Contracting in Phases.**

Where the Director determines it is necessary or desirable for a project to be performed in separate phases, the Director may negotiate a partial compensation for the initial phase of the services required; provided, however, the Director first determines that the firm selected is best qualified to perform the entire project. The contract shall include a provision that the Department may, at its option, utilize the firm to perform other phases of the services at a compensation which the Department determines is fair and reasonable, to be later negotiated and included in a mutual written agreement. In the event that the Department exercises its option under the contract to utilize the firm to perform other phases of the project, the procedures of this Chapter, regarding estimates of value of services and negotiation shall be followed.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code.  
Reference: Sections 10124 and 10261, Public Contract Code

#### **§ 4530.10 Director's Power to Require Bids.**

If the Director determines that the services are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract shall be awarded on the basis of competitive bids and not the procedures of this Article.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code.  
Reference: Section 4529, Government Code

#### **§ 4530.11 Unlawful Considerations.**

Each contract shall include a provision by which the firm warrants that the contract was not obtained or secured through rebates, kickbacks or other unlawful considerations either promised or paid to any Department employee. Failure to adhere to this warranty may be cause for contract termination and recovery of damages under the rights and remedies due the Department under the default provision of the contract.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code.  
Reference: Sections 4526 and 4527, Government Code

**§ 4530.12 Prohibited Relationships.**

No Department employee who participates in the evaluation or selection process leading to award of a contract shall have a relationship with any of the firms seeking that contract, if that relationship is subject to the prohibition of Government Code Section 87100.

Note: Authority cited: Sections 4005.1 and 4101, Welfare and Institutions Code.  
Reference: Sections 4526, 87100, 87100.1, and 87102, Government Code